

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

ROGER ARMANDO MIDENCE §
v. § CIVIL ACTION NO. 5:06cv66
BRIAN K. SMITH, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON THE PARTIES' MOTIONS FOR SUMMARY JUDGMENT

The Plaintiff Roger Midence, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Midence complained of an altercation on July 18, 2005, in which he was allegedly assaulted by correctional officers Brian Smith, Brian Simmons, Scott Godwin, Mark Harbison, Wesley Roseberry, and David Coleman. Following this incident, he says, Sgt. Michael Crow attempted to cover it up. These Defendants have answered the lawsuit.

On January 30, 2007, all of these Defendants except for Roseberry filed a motion for summary judgment (docket no. 32). On February 12, 2007, Roseberry filed a motion for summary judgment, joining in the previously-filed motion. Midence filed a response to these motions, and also sought summary judgment himself. The Defendants have filed a response to Midence's motion for summary judgment.

After review of the motions and responses, as well as the competent summary judgment evidence, the Magistrate Judge issued a Report on May 15, 2007, recommending that all of the motions for summary judgment be denied. The Magistrate Judge concluded that disputed

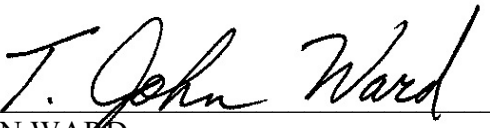
issues of fact remained, precluding the granting of summary judgment. Neither Midence nor the Defendants filed objections to the Magistrate Judge's Report; accordingly, all parties are barred from *de novo* review by the district judge of the findings, conclusions, and recommendations contained in the Report, and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the Report of the Magistrate Judge, the motions for summary judgment as well as the competent summary judgment evidence, and all other pleadings and documents in the case. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 48) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the motions for summary judgment filed by the Plaintiff Roger Midence (docket no. 23), the Defendant Wesley Roseberry (docket no. 35) and the remaining Defendants in the case (docket no. 32) are hereby DENIED.

SIGNED this 7th day of August, 2007.



T. JOHN WARD
UNITED STATES DISTRICT JUDGE